

HOUSE TRANSPORTATION AND PUBLIC WORKS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 1346

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
PROVIDING FOR DISPOSITION OF LEASE PROCEEDS BY THE STATE
TRANSPORTATION COMMISSION; AUTHORIZING THE DEPOSIT OF LEASE
PROCEEDS INTO A FUND OR ACCOUNT TO SECURE BONDS OR MAKE BOND
PAYMENTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 67-3-12 NMSA 1978 (being Laws 1929,
Chapter 110, Section 1, as amended) is amended to read:

"67-3-12. POWERS AND DUTIES.--In addition to the powers
now conferred upon it by law, the state transportation
commission:

A. may declare abandoned and close to public
traffic all grade crossings of railroads by state highways in
cases where grade separations or other adequate crossings are

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underscored material = new
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1 substituted therefor or where such grade crossings become
2 unnecessary to the public convenience by reason of changes in
3 highway locations;

4 B. may offer and, upon compliance with the
5 conditions of [~~such~~] the offer, pay rewards for information
6 leading to the arrest and conviction of offenders in cases of
7 theft, defacement or destruction of markers or highway signs,
8 lights or other warning devices placed upon or along highways
9 of this state under the supervision of the state transportation
10 commission and for information leading to the arrest and
11 conviction of offenders or for the return of property in case
12 of theft or unlawful damaging of property under the control of
13 the commission. All such rewards when paid shall be paid from
14 the state road fund upon voucher drawn by the secretary or
15 other authorized officer or agent of the department;

16 C. shall prescribe by rule the conditions under
17 which pipelines, telephone, telegraph and electric transmission
18 lines and ditches may be placed along, across, over or under
19 public highways in this state and shall forcibly remove or
20 cause to be removed pipelines, telephone, telegraph or electric
21 transmission lines or ditches that may be placed along, across,
22 over or under such public highways in violation of such rules
23 and regulations;

24 D. shall employ an attorney to assist and advise
25 the state transportation commission and the department in the

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1 discharge of their duties and to appear and represent the
2 interests of the commission or department in any case before
3 any court or tribunal in which the official duties, powers,
4 rights or privileges of the commission or department may be
5 involved or affected and to pay that attorney the reasonable
6 value of the attorney's services out of the state road fund;

7 E. shall bring and maintain in the name of the
8 state actions and proceedings deemed necessary by the state
9 transportation commission for the condemnation of rights of way
10 for public highways or for the removal or condemnation of
11 buildings or other improvements that encroach in whole or part
12 upon the rights of way of public highways or for the
13 condemnation of gravel pits or other deposits of materials or
14 supplies suitable for the construction of public highways.

15 The attorney general of New Mexico shall appear in and
16 prosecute all such cases on behalf of the state upon request of
17 the state transportation commission. All such proceedings
18 shall be conducted in the same manner as other cases for the
19 condemnation of real property. The damages assessed in
20 proceedings brought under the provisions of this section shall
21 be paid out of the state road fund from money furnished for
22 that purpose by cooperative agreement between the state,
23 federal government and the county within which the condemned
24 property is situate or any such governmental bodies or out of
25 money furnished for the construction of the highway in

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1 connection with which the condemnation is had, by the county in
2 which the condemned property is situate; provided, however,
3 that if no such money is available, the damages shall be
4 advanced on behalf of said counties out of their money in the
5 state road fund and the state treasurer shall thereafter
6 reimburse the state road fund for the money advanced out of the
7 next installment of money from motor vehicle license fees
8 accruing to the road fund of the county for which such funds
9 were so advanced;

10 F. shall designate in its discretion one of its
11 employees as acting secretary to act at all times when the
12 secretary is absent from the state capital. The acting
13 secretary, when designated, has the right and is hereby given
14 authority at all times when the secretary is absent from the
15 state capital to sign all federal project statements, federal
16 project agreements and federal vouchers with the same force and
17 effect as if signed by the secretary in person, and the
18 certificate of the acting secretary attached to any federal
19 project statement, federal project agreement or federal voucher
20 to the effect that the secretary was absent from the state
21 capital at the time that the same was so signed by the acting
22 secretary shall be conclusive evidence of the truth of such
23 fact. The acting secretary may also be vested by the state
24 transportation commission with power and authority to act for
25 the secretary in such other matters as the state transportation

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1 commission may determine;

2 G. subject to the provisions of Subsection H of
3 this section, may conduct, permit or authorize commercial
4 enterprises or activities on department- or commission-owned
5 land or land leased to or from the department for the purpose
6 of providing goods and services to the users of the property or
7 facilities on the land, including commercial enterprises or
8 activities, other than commercial enterprises or activities on
9 a controlled-access facility conducted, permitted or authorized
10 pursuant to Section 67-11-9 NMSA 1978. In furtherance of these
11 commercial enterprises or activities, the commission may:

12 (1) authorize the lease of department- or
13 commission-owned land as it deems necessary, in which case
14 consideration for the lease shall be payments in cash or cash
15 equivalent that shall be:

16 (a) deposited into the state road fund;
17 or

18 (b) for transactions that were procured
19 through a request for proposals issued by the department on or
20 after July 1, 2007, and in the sole discretion of the
21 department, if the lease is to be used in connection with the
22 development of department land or facilities to be wholly or
23 partially financed through issuance by the state, the
24 commission or any other agency, instrumentality or political
25 subdivision of the state of bonds payable from or secured in

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1 whole or in part by such payments, then, for so long as such
2 bonds or bonds issued to refund such bonds may be outstanding,
3 deposited into a fund or account securing such bonds or from
4 which such bonds may be paid; or

5 (2) authorize the sale or exchange or lease
6 with in-lieu value consideration of department- or commission-
7 owned land; provided that the sale or exchange or lease with
8 in-lieu value shall be subject to the ratification and approval
9 by joint resolution of the state legislature prior to the sale
10 or exchange or lease with in-lieu value becoming effective; and

11 H. for the purposes of Subsection G of this section
12 shall:

13 (1) adopt rules necessary to carry out the
14 provisions of Subsection G of this section;

15 (2) prior to initiating any action to conduct,
16 permit or authorize commercial enterprises or activities, adopt
17 a rule providing a procedure to involve residents of the
18 municipality or county in which the commercial enterprises or
19 activities are proposed to occur in the department's planning
20 and decision-making process for the sole purpose of advising
21 the commission and department on the feasibility and
22 suitability of the proposed commercial enterprises or
23 activities;

24 (3) comply with the Procurement Code in the
25 acquisition process whenever commercial enterprises or

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1 activities result in the commission or department acquiring
2 construction, services or tangible personal property, as those
3 terms are defined in the Procurement Code;

4 (4) if the commercial enterprises or
5 activities are to be developed or operated by a private entity,
6 direct that private entity to:

7 (a) create its plans to be not
8 necessarily in compliance but generally compatible with local
9 zoning and land use policies, including affordable housing and
10 historic and architectural standards, if any, and, to the
11 extent the private entity will obtain water or other services
12 from a local authority, negotiate an agreement between relevant
13 parties for those services, the terms and conditions of which
14 shall be no more stringent than the local authority's then
15 current laws, rules and policies; and

16 (b) submit its plans to the local zoning
17 and land use authority for comment. The local authority shall
18 communicate its recommendations and comments in writing to the
19 department and private entity within thirty days of receiving
20 the plans. The department, commission and private entity shall
21 take no action on the project in reliance on those plans until
22 they have received the local authority's recommendations and
23 comments or until the thirty-day comment period has expired,
24 whichever comes first; provided that the local authority's
25 approval is not required under this section, and this section

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1 does not delegate to the local authority power that it does not
2 otherwise have; and

3 (5) not use the power of eminent domain to
4 acquire land to be developed or operated by a private entity."